

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 99-52**

December 10, 1999

RE: May family members of Kentucky Commission on the Deaf and Hard of Hearing employees be included in the agency program that makes referrals of interpreters for state agencies?

DECISION: Yes, within limitations.

This opinion is in response to your November 30, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 10, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Kentucky Commission on the Deaf and Hard of Hearing (the "KCDHH") conducts a program called "the Access Center" that, upon request, provides interpreter and captioner referrals for state agencies. The Access Center does not handle any billing except in the case of using an in-house interpreter, in which case agencies are interaccounted for the service. In making referrals of interpreters to other state agencies, the Access Center utilizes a software package that populates the interpreters in a random order, according to how they are entered in the database. Each time an interpreter is contacted, whether he accepts or rejects the assignment, the Interpreter Relations Coordinator documents the contact and the subsequent assignment is referred to the next interpreter listed in the database (if he is qualified, appropriate and available). This program ensures no favoritism, and attempts to provide equal distribution of assignments between the individuals listed in the database.

Because there is a shortage of interpreters in the state, you ask whether certified interpreters who are family members of the KCDHH Executive Director and the Interpreter Relations Coordinator may be included for rotation in the Access Center's database of interpreters. If not, you ask whether an interpreting program at a local technical college may be included in the database if family members of the Interpreter Relations Coordinator are two of several interpreters in the technical college's program.

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KRS 11A.020(1)(a), (c), (d) and (3) provide:

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

...

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

...

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

Additionally, KRS 11A.040(3) provides:

(3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof

Although the referral of employee family members by the KCDHH to other state agencies may create an appearance of a conflict, and such action is discouraged by the Commission, because the KCDHH has implemented a system to avoid actual conflicts of interest in the referring of interpreters, the Commission believes that family members of employees of the KCDHH may be included in the Access Center database provided the employees not use their positions in any way to create an advantage or financial gain for family members.

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Additionally, such employees should have no involvement regarding the referrals of their family members to other state agencies, and they should document such abstention in writing. Thus, the Executive Director and the Interpreter Relations Coordinator should abstain from contacting their family members regarding a referral. Such action should be handled by someone in the agency not under their supervision. For example, the Interpreter Administrator could handle agency contacts with family members of the Interpreter Relations Coordinator, and commission members of the KCDHH should handle such contacts with family members of the Executive Director.

The Commission believes that this action will lessen the appearance of a conflict, yet allow for help in the shortage of interpreters for state agencies.

The Commission finds no conflict with the inclusion of a local technical college that employs several interpreters in the Access Center database.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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By Chair: Bertie Oldham Salyer, M.A., A.M.E.